



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEW VISTA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, RP, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant for the Landlord to make repairs and emergency repairs to the rental unit, and to recover the filing fee.

The Tenant’s daughter appeared as an agent for the Tenant along with a legal advocate. One of the Landlords named on the Application appeared for the hearing and also represented the company named on the Application. The Tenant’s agent and Landlord provided affirmed testimony and the Tenant’s legal advocate made a number of submissions during the hearing. No issues were raised in relation to the service of the documents and the parties’ written evidence prior to this hearing.

The parties were informed of how the proceedings would be conducted and no questions were raised in relation to these instructions. The parties were given an opportunity to make submissions, present their evidence and to cross examine each other on the evidence.

Issue(s) to be Decided

- Is the Tenant entitled to an order requiring the Landlord to make repairs and emergency repairs to the rental unit?
- Should the Landlord be held responsible for the repairs being sought by the Tenant?

Background and Evidence

Both parties confirmed that this tenancy started on December 1, 1994 on a month to month basis. The rental unit is subsidised by a third party and the Tenant’s rent contribution as of November 1, 2014 is \$439.00 payable on the first day of each month.

The Tenant's agent testified that her mother has made several written requests to the Landlord for renovations to her rental suite due to her being a long term Tenant. The Tenant requested the Landlord to change her carpets as they were changed ten years ago in 2002. The Tenant's agent testified that during this time she has cleaned the carpets at periodic intervals, but due to the wear and tear on the carpet within the rental unit, the carpets need to be changed with laminate flooring.

The Tenant's advocate submitted that the Tenant had recently been diagnosed with chronic asthma and the Tenant's doctor had provided a medical note which indicated that the Tenant's condition was worsening by the dust, mold and other irritants from her carpet; the doctor recommends that the Tenant's carpet be replaced with laminate flooring. The Tenant provided two black and white photographs which indicate some wearing on various areas of the carpet.

The Tenant requested that the Landlord also re-paint the rental unit as it had been scuffed and marked and had gotten dirty through the 12 years it had not been painted. The Tenant provided black and white photographs which indicate marks and gouges to the walls which the Tenant's agent confirmed had been caused during the tenancy.

The Tenant requested the Landlord to grout the tiles in the bathroom as they had become difficult to clean due to a yellow film on top of them. The Tenant provided a black and white photograph which indicates no film over the tiles.

The Tenant also requested for the Landlord to fix a heater vent cover which she claimed was broken. The Tenant provided a photograph of a baseboard heater which does not indicate any damage. The Tenant's agent testified that the front cover of this heater needed to be replaced with a better cover that did not protrude out from the bathroom wall edge which she claimed to be a safety issue.

The Landlord testified that they had recently completed an inspection of the suite and issues identified by them such as the caulking of the bathroom had been repaired. In relation to the carpet, the Landlord testified that the condition of the carpet is good and pointed to a recent inspection report which documented the living room carpet as in good condition. The Landlord explained that they would replace carpet only if it had been damaged by a flood or if it was loose and wavy. The Landlord added that the Tenant's carpet was replaced in 2002 at the request of the Tenant and that carpets were only replaced in other suites when they are unoccupied. The Landlord testified that they do not have the budget at the moment to do this work voluntarily.

The Landlord testified that the damage to the walls was not caused by them, but by the Tenant, particularly in the bathroom where the Tenant uses equipment to stabilize herself. The Landlord testified that there are no issues with the paint on the walls and the walls were not dirty.

The Landlord explained that the heater covers for the other baseboard heaters in the rental unit were replaced because they were broken and they were replaced with covers that are part of the baseboard heater unit. However, the one in the bathroom is a different type and was faulty. However, this has now been repaired. The Landlord explained that it would not be possible to put a cover used on the other units onto the unit in the bathroom because they would not be compatible and that there were no safety issue with the heater cover in the bathroom for which they would be responsible for.

The Landlord explained that they had completed caulking to the bath area and that the tiles were not loose, were not discoloured and there was no damage to the grouting which required repair.

The Tenant's agent expressed her frustration and explained that the Landlord was responsible for doing these repairs as the Tenant was elderly and cannot move out of the rental suite due to other medical issues. The Tenant referred to Policy Guideline 40 to the Act which relates to the useful life of building elements as well as Policy Guideline 1 to the Act regarding the Landlord's responsibilities.

Analysis

I attempted a discussion between the parties to see what renovations could be made voluntarily between the parties, but to no success. Therefore, I turn my mind to the Act in my analysis of the evidence before me.

Section 32 of the Act requires a Landlord to provide and maintain residential property in a state of decoration and repair that complies with the law and makes it suitable for occupation by the Tenant.

Policy Guideline 1 to the Act explains that a Tenant is responsible for washing scuff marks, fingerprints etc. off the walls and that the Landlord is responsible for painting the interior of the rental unit at reasonable intervals.

Policy Guideline 40 to the Act explains that the useful life of building elements is a guideline for determining claims that relate to damages to a rental unit and to additional

rent increases. Therefore, I have not considered this guideline in my analysis because this Application does not pertain to a rent increase or damages to the rental unit.

Section 33 of the Act outlines what constitutes an emergency repair. Based on the evidence provided, I find that the Tenant has not provided sufficient evidence to indicate that the repairs requested are an emergency. Therefore, I have only considered the repairs requested by the Tenant under regular repairs.

In relation to the painting of the rental suite, I find that a mere passing of a long period of time is not sufficient to compel the Landlord to paint a unit. A Tenant would need to show that the unit lapsed in a state of decoration that required repainting after a reasonable time. In this case, I find that the Tenant's agent pointed to scuff marks and gouges in the walls in her photographic evidence for which the Tenant would be responsible for rectifying.

The Landlord testified that the paint on the walls was in good condition. Therefore, I find that the Tenant has failed to provide sufficient evidence to show that the rental suite is in a state of decoration that requires it to be repainted.

In relation to the replacement of the carpet, I find that the Tenant relies on a medical condition as a reason to replace the carpet in the rental unit to laminate flooring. The medical evidence of the doctor is based on a consultation with the Tenant and there is no evidence to suggest that the doctor inspected the carpet and can say with certainty that the carpet is the sole cause of the Tenant's medical condition.

I find that a Landlord cannot be held liable for changes in a Tenant's medical condition during a tenancy, especially when the Landlord is not proven as the cause of the medical issue. The Tenant submits that there is mold in the carpet and it is dusty but there is no independent evidence submitted by the Tenant that proves this link with the carpet and the Tenant's chronic asthma.

The Tenant did provide two photographs which were black and white and appear to indicate some wear in the carpet. However, I find that this is not sufficient evidence for me to compel the Landlord to replace the entire carpet of the rental suite or that this should be replaced with laminate flooring.

I also find that the Tenant's agent failed to show how the baseboard heater is a safety issue to the Tenant. The Landlord explained that the heater cover was broken and replaced and I find that, in the absence of any other evidence to suggest otherwise, there is nothing else that a Landlord would be required to do in this case.

The Tenant relies on one black and white photograph as evidence that the tiles in the bathroom need to be grouted. The Landlord disputed this evidence and I find that this photograph is not sufficient evidence that a problem exists with the grout that would warrant a repair from the Landlord.

While I am empathic to the Tenant's medical condition, I find that the Tenant has failed to provide sufficient evidence that the Landlord should be compelled to do the major renovations requested to the rental unit and that the Landlord has breached Section 32 of the Act in not doing repairs to the rental unit.

Conclusion

Based on the above reasons, the Tenant's Application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 03, 2014

Residential Tenancy Branch

